SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

Nos. 219, ~~434 Misc. and 436 Misc.~~

REIES LOPEZ TIJERINA, CRISTOBAL LOPEZ TIJERINA, JERRY NOLL,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY TO BRIEF IN OPPOSITION

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The Government's statement that the films in exhibits 17 and 18 show Reies Tijerina "directing the crowd where to take the officers" is simply not true.

Points I and II of Petitioners' brief demonstrated that there was insufficient evidence to convict them for aiding and abetting the assaults on two Rangers (Pet. 13-21).

The Government in the main has ignored this argument. Its six-sentence rebuttal is so misleading that Petitioners have no alternative but to respond to it sentence by sentence. In particular the Government's position that the films provide evidence of aiding and abetting which is lacking in the oral testimony is not supported by the films themselves.

1. The Government cites pages 1146 and 1190 in asserting "Reies himself testified that he held the caravan three or four miles south of Echo until he was sure the National Guard was not there" (Res. 10). However, these pages do not show that Tijerina organized or held the caravan anywhere. They do show that Reies was part of a group which halted a few miles from Echo until it was ascertained there would be no confrontation with the National Guard. There is no testimony that either the caravan or the angry crowd were part of any group that had been organized by any of the defendants.

Furthermore, Reies Tijerina and Jerry Noll were not convicted for being members of a caravan; nor were they convicted for being part of a group that camped illegally on the National Forest grounds. They were convicted of aiding and abetting the assault of two forest rangers. The record is lacking any evidence to support the charge.

2. The Government's second sentence states that "the films show Reies directing the crowd where to take the officers, *i.e.*, to the table where Noll was acting as judge" (Res. 10). Anyone who has viewed the films could not make such a statement. After receiving the Government's brief, Petitioners requested and received permission to view the films which are now part of the record before this Court. Below is a somewhat detailed account which Petitioners compiled after viewing the films a number of times.

a. Exhibit 17

A KOB-TV news commentator and photographer testified that he arrived at the campsite between 6:00 and 7:00 A.M. on October 22, 1967. He shot over four hundred feet of film, and left around dark (Tr. 647, 651). He then edited and spliced the film he had taken. His final product for television was Exhibit 17—about three minutes or one hundred feet of silent film concerning the events in question. The film is spliced in many places as the result of cutting three-fourths of the original footage (Tr. 652-53).

The film began with two Rangers shaking hands with a grazing staff official. A small crowd had already gathered at the campsite. The scene then shifted to a long distance view of the approaching caravan. Then followed close up shots of the caravan crossing the cattle guard, the Rangers stepping aside to allow the caravan to pass and one tipping his hat, and the grazing official waving the trucks into the camping area. No defendant was present in this part of the film.

The film was spliced, and then showed a series of close ups of defendant Reies Tijerina parking his truck. The film was again spliced.

The next shot showed defendant *Cristobal* (not Reies) Tijerina grabbing a Ranger. A crowd had gathered around Cristobal and the Ranger; this crowd began to move up toward some unidentified place. Defendants Reies Tijerina and Noll were not present in this portion. Petitioners understand from Respondents' brief that they assert Reies was in front directing the crowd; "it showed that they had seized the Rangers and dragged them to the table where Noll and Reies were waiting" (Res. 10, fn. 7). The film simply does not support this assertion.

Following the shots of the crowd moving with the Ranger up to an unidentified place was a view of the backs of one Ranger flanked on either side by campers. Behind these three figures was the back of another man who may have been defendant Reies Tijerina. This man was in back of the action and not in position to direct the crowd or deputies where to take the Rangers. The movement of the crowd was clearly defined prior to the appearance of this unidentified man. The table to which the Rangers were eventually taken is not apparent in these earlier shots. Defendant Reies Tijerina did not appear in the film while the Rangers were at the table. Defendant Noll was sitting at the table to which the Rangers were brought. Noll at no time touched the Rangers.

The remainder of the film included among other things two separate incidents showing close ups of defendant Reies Tijerina. These incidents occurred after the assault and "trial" and offer no support that Reies aided and abetted the earlier assault.

b. Exhibit 18

Unlike Exhibit 17 which was a silent film, Exhibit 18 had sound. Newsman Dick Niffing testified that he and photographer Britton shot over four hundred feet of film and cut it to about nine minutes. One incident at least was placed out of its chronological sequence in the editing process (Tr. 760, 762, 766, 768).

The film was in large part a series of interviews with various persons present at the Amphitheater. It began with an interview of a local man. The film was spliced. Next appeared an incident out of time sequence which portrayed a Ranger talking with a man who refused to pay the recreation admission charge.

The film spliced again, and then showed the advancing and noisy caravan. After another splice, there was a scene of the Rangers being led to the table. The act of seizure itself was not as clearly portrayed in Exhibit 18 as in Exhibit 17. While the Rangers were being marched to the table, the newsman commented that they (the Rangers) were apparently being "arrested for trespassing." The commentator then asked one of the men holding the Ranger what would be done. The reply was "put them in jail" and "there's the judge." Throughout these incidents there was no shot of nor reference to Reies Tijerina.

Thus, the Government's statement that the "films show Reies directing the crowd where to take the officers . . ." (Res. 10) is simply not true. Film 18 does not even show defendant Reies Tijerina at this point.

Following the seizure of the Rangers, film 18 then showed an interview with defendant Noll at the table, and a scene with the two Rangers, the grazing official and the crowd at the table. Again defendant Reies Tijerina was not shown.

Following the scene at the table, the film showed defendant Tijerina walking with two law enforcement officers. The interviewer asked Reies Tijerina why the Rangers were arrested. Tijerina replied they had been arrested for trespassing on the town land of San Joachin on *orders of the town.* This explanation offered by Tijerina was not substantially different from that offered by the news commentator himself earlier in the film. It certainly offers no support that Reies Tijerina was an aider and abettor. Neither Tijerina nor the commentator were members of the town, both were observers of the unfolding events. Neither aided or abetted, although each offered an explanation for the facts which had occurred.

The interview between the commentator and Reies Tijerina continued. When questioned whether the Forest sign would be torn down and a sign proclaiming San Joachin Pueblo would be erected, Tijerina replied he didn't know but that he thought that would be "decided later today." Tijerina said that if the land was damaged during the course of the day and the court found the campers liable, they would pay damages. However, Tijerina asserted the land was the peoples and thus past court decisions which had refused to recognized the rights of Spanish-American under former Spanish and Mexican land grants were in error.

When talking to the Rangers Reies said the Rangers had been brave and were not responsible for what had happened. In explaining Tijerina added, "you can't stand in the way of the people." In this comment Tijerina neither adopted or rejected the action of the crowd. It was certainly not aiding or abetting the earlier assault.

Still later in the interview, the interviewer asked whether Tijerina planned to leave the Amphitheater as he did the weekend before or "stay permanently." Reies Tijerina replied to the effect that he would "stay here from now on unless driven out by force contrary to the provisions of the Treaty of Guadalupe-Hildalgo." When asked how they planned to get the case of land ownership into court, Tijerina replied that the campers expected that "they [law enforcement officers] will come out with a court order" charging the campers with trespassing. If the title claim was lost in the lower court, they would "appeal to the Supreme Court."

There was another splice. The next scene showed a large sign proclaiming the Pueblo of San Joachin del Rio de Chama posted to cover much of the sign identifying

Carson National Forest. There was another splice. The film closed with another shot of Reies Tijerina and then some general shots of campers preparing meals, etc.

3. Sentence 3 of the Government's response states that:

> "[t]he jury could reasonably find that Noll, in assuming the function of a judge, and Reies, in directing where the Rangers were to be brought by persons purporting to act as 'deputies', were acting pursuant to a deliberate plan for the seizure and 'trial' of the Rangers . . ." (Res. 10)

What the Government has done is coupled the *false statement (i.e.* Reies Tijerina was directing the crowd) with a conspiracy theory (now phrased as a "deliberate plan for the seizure") which was rejected by the jury (returned a mistrial on the conspiracy count). The jury did not find defendants "were acting pursuant to a deliberate plan" (Res. 10). The jury found defendant Cristobal Tijerina and Dominquez guilty of assault only on the Ranger each respectively touched; defendant Chavez was found guilty of both assaults because he touched both Rangers. Contrary to what the Government now attempts to argue the jury did not return its verdicts on the basis of a "deliberate plan."

4. Sentences four through six are conclusions resting finally upon the false assertion that the films offer evidence that defendants Noll and Reies Tijerina aided and abetted the assault. As has been indicated above the films simply do not show Reies Tijerina "directing the crowd where to take the officers" (Res. 10).

CONCLUSION

Points I and II of Petitioners' brief demonstrated that defendants Reies Tijerina and Jerry Noll were convicted of aiding and abetting an assault in the absence of any evidence to support the charge. Apparently, conceding that the oral testimony does not support the charge, the Government answered by saying there was sufficient evidence in the films. Petitioners have viewed the films in detail and deny the Government's assertion. Consequently, if doubt exists in this Court's mind, Petitioners respectfully urges the Court to review this specific aspect of the record. It will show defendant Noll presided as "judge" of the "trial" after the Rangers were seized. It will not show defendant Reies Tijerina participating in the immediate events preceding, surrounding, or following the assaults.

Respectfully submitted,

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